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Authority in *Intimations of Global Law*
PATRICK CAPPS*

Introduction

In this essay, I explore the distinction between *voluntas* and *ratio* in Neil Walker's *Intimations of Global Law*,¹ and consider how that distinction is employed in relation to the 'claim to authority that global law entails':² that is the sufficient reasons why individual citizens, the institution of a state, or the state itself, should subordinate their choice of action so as to conform to the action-guiding directives of the various bodies that comprise the institutions of global law. Specifically, my argument is that Walker does not appreciate the full role of *dissent* within the global legal order as a critical means by which authority, rooted in a universal set of 'core moral concerns' for the protection of basic rights and autonomy (which he calls *ratio*), can be authentically accumulated within global law.

His claims on this matter emerge towards the end of *Intimations*, but emerge from his discussion of the species of global law, which forms the core of his book. Walker argues that there are seven species of global law. Each species is a 'partial vision' or 'perspective' on the 'actually existing global configuration in all its multipolar, interlocking complexity.'³ What is the 'existing global configuration' and what specifically is a 'species' of global law?

The 'existing global configuration'

Description of Walker's understanding of the 'existing global configuration'—his object of inquiry—is not easy. This is because much of his discussion is a sophisticated dissection of how other theorists have presented interpretations of what they consider is essential or ephemeral,⁴ or what is dangerous or emancipatory, about the existing features of the global

* School of Law, University of Bristol. This review is based upon a discussion paper presented at Queen Mary University of London. Thanks to Richard Collins, Clair Gamage, Cian Murphy, Akis Psygkas, Julian Rivers and Jane Rooney for providing comments on earlier drafts of this essay.

¹ Neil Walker, *Intimations of Global Law* (Cambridge University Press, 2015. Hereafter *Intimations*)

² *Intimations*, 148.

³ *Intimations*, 136.

⁴ See Richard Collins, 'The Slipperiness of "Global Law"' (2017) 37 *Oxford Journal of Legal Studies* 714-739.

legal landscape. As a result, the actual features of this landscape tend to be hidden, or implied, within his discussion. However, these interpretative efforts all seek to ‘make sense’ of a real empirical phenomenon that is the ‘existing global configuration’. This configuration itself, if not Walker’s understanding of it, can be set out fairly easily.

In the last few decades there has been an explosion in the number of global regulatory bodies. Each of these bodies has a reach that is not jurisdictionally restricted to the territory or nationals of one state. A further characteristic of these bodies is that they have specific and specialised regulatory mandates to, for example, regulate human rights, peace and security or global or regional markets. The term *global administrative law* has been coined by scholars in university research centres in New York and Heidelberg to describe collectively the regulatory regimes that these bodies operate.⁵ Some of these bodies are constituted by multilateral treaties (e.g. the United Nations), while others are intergovernmental networks of either domestic regulators (e.g. the European Systemic Risk Board (ESRB)⁶) or private actors (e.g. GLOBALG.A.P., whose membership is dominated by European producers and retailers of agricultural produce, and which sets ostensibly voluntary standards for the safety certification of agricultural production processes;⁷ or the Forestry Stewardship Council (FSC), which operates a global certification body for sustainable timber products⁸). The public/private distinction is a useful way of categorising how these bodies are constituted (and this *may* be significant when questions of authority are considered)⁹ but it says little, in my view, about how they actually govern. For example, private bodies such as those just mentioned have governance

⁵ See, for example, <http://www.iilj.org/gal/> and <http://www.mpil.de/de/pub/forschung/nach-rechtsgebieten/voelkerrecht/ipa.cfm>

⁶ The ESRB was established by the European Commission (in light of a report by the Larosière Group) to coordinate the policies of various bodies (for example, EU states and their central banks) to help ameliorate the risks of another global banking crisis. For a full description and discussion of this body see E Ferran and K Alexander, ‘Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board’ (2010) *European Law Review* 751-776.

⁷ See N Hachez and J Wouters, ‘A Glimpse at the Democratic Legitimacy of Private Standards: Assessing the Public Accountability of GLOBALG.A.P.’ (2011) 14 *Journal of International Economic Law* 677-710 at 682.

⁸ See E Meidinger, ‘The Administrative Law of Global Private-Public Regulation: The Case of Forestry’ (2006) 17 *European Journal of International Law* 47-87.

⁹ R. Stewart, ‘Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness’ (2014) 108 *American Journal of International Law* 211 at 212.

structures that are very similar to those found within state administrative agencies, and they normally seek to regulate important public goods (in the examples used above, global food safety or sustainable forestry). There are now many thousand bodies like these according to those who have engaged in sustained empirical analysis of the field.¹⁰

Another important feature of the ‘existing global configuration’ is the formal or informal links or relations between the abovementioned global administrative bodies. For example, the judgments of the Court of Justice of the European Union in *Kadi*¹¹ and the European Court of Human Rights in *Nada*,¹² have found that the implementation of freezing orders made by the UN 1267 Sanctions Committee by states, constitute a violation of fundamental rights. These cases help to make the point that the ‘existing global configuration’ is a *system* of sorts,¹³ which also includes, for example, state domestic courts, and actors such as multinational law firms and international commercial arbitrators, and not simply a set of disparate bodies. This should come as no surprise, but leads to numbers of these bodies seeking to regulate the same activity of the same actor, and so questions of competence and hierarchy, which are resolved through formal constitutions in state legal orders in a domestic context, quickly arise. There is, though, no unified multilateral system of global governance based upon fixed, shared and progressive ‘community interests’ and hierarchical suprastate governance as is suggested by Bruno Simma.¹⁴ The more accurate picture is given by Richard Stewart, who writes that ‘...[a]uthority is dispersed among a myriad of distinct administrative regimes pursuing

¹⁰ See *Intimations*, 34, and also see, for example, T. Aalberts, *Constructing Sovereignty between Politics and Law* (Routledge, 2012) and A von Bogdandy, P Dann and M Goldmann, ‘Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities’ (2008) 11 *German Law Journal* 1375-1400.

¹¹ 1 Case C-402/05 P and C-4p15/05, *P Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351.

¹² *Case of Nada v Switzerland* (Application no [10593/08](#)) (2012) European Court of Human Rights. This judgment directly invokes the judgment in *Kadi*.

¹³ By ‘system’, I mean something close to Walker’s characterisation of a distinctive feature of globalisation: ‘...each dimension should possess its own developmental logic, and each its own trajectory, with all connected through circuits of mutual influence rather than lines of unilateral determination.’ (*Intimations*, 8 and see also discussion of Rosenau’s definition of globalisation at 14n36). Like Walker, I do not presume here that a system of global law can only be conceived of as being structured by a foundational constitution, or as able to perform set or agreed functions, in ways that may be aspired to by administrative bodies in a state legal order.

¹⁴ B Simma, ‘From Bilateralism to Community Interest in International Law’ (1994) 250 *Recueil des Cours de l’Académie de Droit International* 217.

specialized tasks without any overarching authorities or arrangements for supervision, accountability, coordination or correction.’¹⁵

‘Species’ of global law

Turning now to Walker’s ‘species’ of global law, he claims that each offers a ‘partial vision’ or ‘perspective’, which reflects various cognitive interests in the ‘actually existing global configuration’ just described. He identifies seven species of global law (these are: structural, formal, abstract-normative, historical-discursive, laterally co-ordinate, functionally specific and hybrid). A detailed description of them is found in *Intimations* and need not be re-rehearsed here, except as necessary to illustrate Walker’s claims. What is more important is what he thinks these species in general are, or what they do: what does each ‘species’ (*qua* ‘partial vision’ or ‘perspective’) reveal about the ‘existing global configuration’? Here are four possibilities of what might be revealed, and each is found within the pages of *Intimations*.

First, ‘species’ might reveal nothing directly about the ‘global configuration’, but instead could just be a way of categorising commensurate theories. What Walker might mean by ‘species’, then, are groups of theories that are commensurable in the simple sense that they share various claims about the ‘existing global configuration’. Different ‘species’, by contrast, are incommensurable. For instance, and to take two sub-species of global law, it is probably the case that a theory or claim that global law reflects a *hierarchical* vision of global constitutionalism (that resemble those forms of constitutionalism found in nation states) is incommensurable with a *flat* legal pluralistic vision (which means that global bodies do not stand in a formal hierarchical relationship with others). While this may make sense given the normal use of the word ‘species’, Walker appears to reject a hard-nosed version of this definition. It is more likely that his view is that species of global law share ‘family resemblances’.¹⁶

Second, species could be understood to mean different interpretative perspectives. Each species is a focal perspective from which the ‘existing

¹⁵ See note 9, at, 212.

¹⁶ *Intimations*, 199; L. Wittgenstein, *Philosophical Investigations* (4th ed., Wiley-Blackwell, 2009, first published in 1963).

global institutional configuration' is to be interpreted. For example, the 'structural' species of global law adopts a focal perspective that leads us to interpret the UN Charter at the apex of a hierarchical order built upon various universal fundamental values. By contrast, the 'laterally co-ordinate' species of global law is a perspective which interprets the same aspects of the Charter system differently as part of a flatter, pluralist, and overlapping landscape of separate global legal bodies or systems.

Third, species could be means. Although *Intimations* is 'predominately empirical and explanatory',¹⁷ there is a discussion of a range of normative approaches in the book. Where the discussion turns normative, the various species present models of global law that are instrumentally rational ideal-types which allow various ends described by theories of global justice to be achieved.¹⁸ They explain, then, what ought to change in the global configuration so that it can become a just global order. So, for example, it could be argued that the forms of the 'structural' species may be instrumentally rational to effectively institutionalise human rights and the rule of law globally.

Fourth, and related to the third possibility, species might represent models of authority in global law. Global law is generally a form of coercive ordering, which means that the bodies which enforce it have means available to them to restrict the choices of those subject to their attempts to order.¹⁹ Even those bodies that seem to be entirely private enterprises which seek to form various rule-based regulatory functions (such as GLOBALG.A.P.) can be coercive as they are able to deny access to markets and harm the well-being of those to whom their attempts at regulation are directed. To the extent that global law is genuinely law, and not simply despotic rule, its claim to order must be justified. On this reading, the species of global law offer different justifications (e.g. an appeal to human rights, rule of law or expert knowledge) for some of the authority claims of various bodies that comprise it.

¹⁷ *Intimations*, 27.

¹⁸ For a discussion of Walker's views, see *Intimations*, 136.

¹⁹ See P Capps, 'Legal Idealism and Global Law', in P Capps and SD Pattinson (eds), *Ethical Rationalism and the Law* (Hart, 2017) at 213.

For Walker, the choice of ‘species’ depends upon the ‘problem posed’ and ‘question asked’.²⁰ We might think of the ‘question’ or ‘problem’ in terms of the four different possibilities outlined. A closer fit to the ‘institutional configuration’ could lead us to select one interpretative perspective over another (so, a laterally co-ordinate sub-species of the ‘divergent approach’,²¹ which sometimes defends pluralism, might better explain the existing configuration, and its historical origins, than species that emphasise a fixed constitutional hierarchy). Alternatively, if our question is one of justice, we can consider which ‘species’, as an institutional form, is best able to achieve a particular vision of justice (for example, if justice requires toleration of the values of others, then a pluralistic institutional form might be instrumentally rational). Furthermore, if our problem is about authority within the ‘existing global configuration’, then we should be able to show why global bodies, within which decisions are taken by experts, accumulate authority, or whether that authority can only properly arise if their authority rests upon deliberative procedures.

The various ways in which the word ‘species’ is employed within *Intimations*, does suggest an eclectic and diverse range of plausible ways of employing theory to explain or justify the ‘existing global configuration’. This openness, ‘*expansiveness*’²² or ‘*capaciousness*’²³ is an important feature of Walker’s book. However, the foregoing discussion indicates that the value we attach to each ‘species’ depends upon its quality in solving particular problems or answering specific questions. Of these, it is my view that some questions or problems are more significant than others, and some are of critical importance.

The most critical question for which an answer should be sought is why, if at all, the ‘existing global configuration’ can be considered an authoritative form of governance?²⁴ An answer to this question provides the reason why global bodies should be treated as authentically authoritative, offer weak or no reasons for compliance, or are better understood as an abuse of power that should be resisted. To elaborate, should we treat the

²⁰ *Intimations*, 137.

²¹ *Intimations*, 106-118.

²² See Collins, note 4, above at 718.

²³ Ibid, and D Kenny, ‘Book Review: Neil Walker, *Intimations of Global Law* (Cambridge University Press, 2014)’ (2015) 63 *American Journal of Comparative Law* 1053 at 1055.

²⁴ See P Capps, note 19, above.

decisions of the Security Council Sanctions Committee as authoritative, for instance, to the extent that those decisions are *intra vires* of powers afforded to the Council by the UN Charter, which is, in turn, rooted in state consent? Alternatively, should we disregard its decisions because that Committee fails to govern in the ‘right way’ (because, for instance, its mechanisms fail against basic standards of administrative justice or fundamental human rights more broadly)? If its decision should be disregarded, should we seek to challenge its decisions directly or indirectly in other institutions (such as Mr Kadi’s challenge before the CJEU)? Walker’s *Intimations* does suggest answers to these ‘questions asked’.

Intimations of authority

Walker first sets up the problem of authority in global law. Forms of global law had previously relied upon the ‘sovereigntist’ conception of authority, which is built upon state consent. Given the description of the ‘existing global configuration’ set out above, he is correct to claim that this conception ‘no longer dominates as it once did’.²⁵ Why is this? Others have offered evidence of a significant ‘autonomisation’ of various global bodies (especially courts), which claim competences that go some distance beyond the sometimes under-specified and general treaty provisions upon which they are constituted.²⁶ As has already been pointed out, we also see the emergence of bodies that are ‘private’, and unconnected to ‘sovereigntist conceptions’ of global law, such as GLOBAL.G.A.P or the FSC. We might then surmise that the emergent ‘global institutional configuration’ is a form of effective, coercive, regulation, but, at least in part, it cannot plausibly have authority against the ‘sovereigntist’ conception of authority.²⁷

From these observations, it might be said that the problem with the developments just mentioned is that according to the ‘sovereigntist’ conception (or at least a ‘republican’ version of it²⁸), the appropriation of interpretative powers or law-making competences by international courts, and the emergence of private global regulation, is nothing more than an attempt by the powerful actors to insulate themselves from significant

²⁵ *Intimations*, 163.

²⁶ For discussion of some of the relevant literature, see the introduction to P Capps and HP Olsen (eds), *Legal Authority Beyond the State* (Cambridge University Press, 2018).

²⁷ *Intimations*, 205.

²⁸ See P Capps, ‘The Evolution of Global Law’, in above at note 26.

public control or oversight.²⁹ But this position seems too extreme because, first, we should not presume that the powers assumed by international courts to interpret and create law necessarily indicate that they are necessarily unconcerned with the rule of law or other fundamental values; second, it seems inappropriate in many ways to afford global bodies authority just because various (sometimes morally dubious) states have consented to be bound to them; and, third, it is the case that many private regulatory bodies do adopt regulatory structures that adhere to values such as transparency and accountability, and they often seek, in good faith, to regulate important public goods such as food safety or sustainable forestry.³⁰ *Intimations* provides an interesting response to these difficulties.

The tone of Walker's discussion of the authority has, embedded within the seven species of global law, a pluralist ring to it. He writes that of the species of global law that purport to replace the sovereigntist model, 'none...can claim to supply an authoritative meta-principle for a transnational age in a similar fashion and similar extent'.³¹ Elsewhere he writes: '...new global law does *not* specify any particular source or pedigree, and so may account for itself in many different ways and may claim or assume authority on many different grounds.'³² There is, instead, a plurality of normative bases for authority *claimed* by different global bodies, and the species of global law, in one sense, are generalisations of those claims. But while this might be empirically true—and, as mentioned, Walker's book is 'predominately empirical and explanatory rather than normative and predictive'³³—a question Walker faces towards the end of *Intimations* is why any of these authority claims may be justified.

While, as a matter of fact, Walker adopts a pluralist approach in describing authority claims in global law, in the last chapter of *Intimations*, he does offer a tantalising glimpse of a justification for authority. His answer seeks to move beyond empirical and taxonomical claims about

²⁹ See also Eyal Benvenisti and George Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 *Stanford Law Review* 595-631.

³⁰ See also S Bernstein & E Hannah, 'Non-State Global Standard Setting and the WTO: Legitimacy and the Need for Regulatory Space' (2008) 11 *Journal of International Economic Law* 575-608.

³¹ *Intimations*, 164.

³² *Intimations*, 19 and also see 21.

³³ *Intimations*, 27.

authority: it does not mistake the fact of pluralism as implying the endorsement of a pluralist normative vision of authority,³⁴ even though when considering such questions he recognises that we must take the world as we find it.³⁵ Instead, he argues that while global law *is* institutionally diverse and pluralistic, there is emerging from that diversity a ‘consensus’ or ‘common sense’ of global law which is able to ground its authority.³⁶

He then argues that the relationship between consensus and diversity just described rests upon the distinction between global law as *ratio* (ie it exhibits a specific but universal rationality) and *voluntas* (ie it is an expression of human will), and both can be said to provide bases for justified authority claims in global law. The species of global law seem to now become normative responses to the problem of justifying authority. Each tends to fall either side of the distinction between *ratio* and *voluntas*:³⁷ for example, the appeal to the rule of law by the formal species of global law reflects *ratio*, whereas the structural species (in which consent is the basis for the building of global constitutional structures) appeals to *voluntas*.

Walker argues that, quite often, and as a matter of fact, global law appeals to *ratio*, rather than *voluntas*: there is a ‘preponderance of *ratio*’, which he understands is ‘an encouraging sign’, in that it indicates that global law is not simply a ‘patchwork of difference’.³⁸ Thus, global law is becoming wedded to ‘certain core moral concerns’ rather than being characterised by pluralistic *value diversity*. What substantively does he recognise as these core moral concerns? The examples he gives on the third from last page of *Intimations* are respect for ‘basic rights’, ‘autonomy’ and the protection of ‘diverse life chances’.³⁹

These values form the basis of a range of possible theories of authority. First, authority could be claimed on a Razian basis: the authority of global law arises if one is better able to conform to Walker’s core moral concerns by acting in accordance with global law’s directives, than to act

³⁴ This is a move which Nico Krisch seeks to make (See N Krisch, *Beyond Constitutionalism* (OUP, 2010) and P Capps and D Machin, ‘The Problem of Global Law’ (2011) 74 *Modern Law Review* 794-810.

³⁵ *Intimations*, 136.

³⁶ *Intimations*, 196.

³⁷ *Intimations*, 197.

³⁸ *Intimations*, 197.

³⁹ *Intimations*, 203.

otherwise.⁴⁰ Second, those values might be formal (eg connected to the rule of law) and so officials can justifiably claim authority because they afford sufficient respect for the autonomy of those they govern when those officials ‘play by the rules’.⁴¹ Third, respect for autonomy and diverse life chances may be respected through deliberative and democratic institutions. Thus, the authority of global law arises because those subject to the law have consented to it in some way.⁴² One could be picky about how Walker’s core moral concerns give rise to justified authority claims in these three ways, but it should be recognised that these positions are often held as mutually interdependent (an obvious example would be found in Dworkin’s *Law’s Empire*⁴³).

Moving now to *voluntas*, he argues that the absence of the hierarchical features of state constitutions, and global law’s general heterarchical or unranked general structure or character, means that legal techniques orientated towards ‘agreement or compromise’ are preponderant. So, it seems that not only is global law developing universal *ratio*, and it should do this, but this develops *from* a pluralist institutional structure that accommodates, and mediates between, real competing political wills and social forces. The authority of institutions that rely upon universal *ratio* does not emerge by reference to an external moral source, but instead emerges immanently from the interactions between bodies within the ‘existing global configuration’.⁴⁴ This appears to be some sort of modern restatement of classical ‘sovereignist’ thinking about authority applied to the post-national global institutional landscape. But unlike the traditional model, the global bodies that form this landscape adopt informal *procedures* and *standards*, linked to values such as accommodation and compromise, which allow ‘contestation’ to be settled between global bodies (specifically, how ‘multiple partial claims to authority can be kept alive’⁴⁵). From these procedures emerges the product which is *ratio*, but, as mentioned above,

⁴⁰ See generally J Raz, *The Morality of Freedom* (OUP, 1986) ch 2.

⁴¹ This is close to the position taken by J Brunnee and S Toope, *Legitimacy and Legality in International Law* (Cambridge University Press, 2010).

⁴² This is an approach broadly endorsed by T Christiano in ‘Democratic Legitimacy and International Institutions’ and P Pettit in ‘Legitimate International Institutions: A Neo-Republican Perspective’ in S Besson and J Tasioulas (eds), *The Philosophy of International Law* (Oxford University Press, 2010).

⁴³ R Dworkin, *Law’s Empire* (Harvard University Press, 1986).

⁴⁴ *Intimations*, 199.

⁴⁵ *Intimations*, 189.

ratio also seems to have an intrinsic justification. How do the processes described by *voluntas* give rise to *ratio*?

To explain, the origins of Walker's view in *Intimations* are found in his earlier work, where he developed a theory called 'constitutional pluralism'. In it, he rejects both radical pluralism and hierarchical constitutionalism.⁴⁶ When rejecting both, he argues for a model of global law based upon the constitutionalisation of plural communities and regulatory bodies within a flat, heterarchical *institutional* structure. The capacity of bodies to be open to, and to challenge, other views (which are valuable procedural attributes of bodies) in turn leads to the genuine cross-fertilisation of ideas, and the generation of genuine common values. If we now consider the full quotation where he discusses 'certain core moral concerns' at the end of *Intimations*, Walker seems to think that it is these procedural features of the pluralistic landscape generate a universal *ratio*:

For global law as process, in directly tracking global law's other and secondary template as *voluntas*, should nevertheless remain closely linked to law as *ratio*, not just in terms of patterns of interactive and combinatory compatibility, but also in terms of possessing in common certain core moral concerns, often articulated in language of basic rights, to respect autonomy and protect diverse life chances wherever these desiderata are at issue of under challenge.⁴⁷

So, global law is simultaneously pluralistic, responsive to social and political values, while not dismissing, and, indeed, generating, global legal norms consistent with his 'core moral concerns'. This is how authority is generated in global law for Walker.

Walker underplays an important feature of the pluralistic landscape, which can be revealed by considering the *Kadi* case further. One general factual observation of the various legal judgments is that they required consideration of legal norms produced by multiple legal sites (such as the human rights provisions in the EU treaties, Security Council Resolutions, Sanctions Committee decisions and also domestic and European primary

⁴⁶ Neil Walker, 'The Idea of Constitutional Pluralism' (2002) 65 *Modern Law Review* 317-359.

⁴⁷ *Intimations*, 203.

and secondary legislation). At least at the point of application by European courts, the collision between these norms in the courts is resolved more in accordance with universal values such as dignity or administrative justice, than others, such as security. From this observation, the more general idea is drawn that universal *ratio* is the product of contestation when bodies (such as the CJEU) refuse to compromise on matters concerning fundamental rights. This refusal, and the values that underpin it, as time has shown, were not able to be fully ignored by the Sanctions Committee, not least because to do so would create a hole in the Committee's sanctions net. For instance, and in response to the judgments of European courts, the Committee has now appointed an ombudsperson to consider the evidence of those listed.⁴⁸ The point is, though, that *ratio* emerges from another word Walker uses: 'challenge'. And by this, the words 'resistance' and 'dissent' might be even more appropriate.

Thus, in *Kadi*, the CJEU rightly determined that the actions of the governments of states parties to enforce the listing by the Sanctions Committee of Kadi were illegal. The Court should refuse to accept a failure of those states to adhere to basic principles of the rule of law and fundamental human rights even in pursuance of the security objectives of the Sanctions Committee. But this form of refusal, resistance, or dissent is how a 'preponderance of *ratio*' emerges from the pluralistic global legal order, as Walker maintains it does. Put another way, it is an instrumentally rational way by which the institutional structure of the 'existing institutional configuration' may move the global legal order to a higher 'stage of authority', to use Alan Brudner's phrase.⁴⁹ Resistance within the pluralistic institutional structure of global law is a motor by which it moves from forms of authority claim which are based upon *de jure* (mere rule governed) authority, to forms of authority in which each citizen is recognised as free and equal under law as members of a global society. Dissent can be achieved through a number of means, but the emergent doctrine of proportionality seems a fruitful way forwards, to the extent that it requires a body to show some deference or restraint to a primary decision-taker (who

⁴⁸ See M de Goede and G Sullivan, 'Between Law and the Exception: The UN1267 Ombudsperson as a Hybrid Model of Legal Expertise' (2013) 26 *Leiden Journal of International Law* 833.

⁴⁹ A Brudner, *Constitutional Goods* (OUP, 2004) and Capps, note 26. See also, N Tukuler Isiksel, 'Fundamental Rights in the EU after *Kadi* and *Al-Barakaat*' (2010) 16 *European Law Journal* 551.

may well have, for example, greater expertise in a matter), except when fundamental rights are at stake.⁵⁰ In sum, then, authority is accumulated by global administrative bodies, and those subject to them, as they demand from other bodies decisions that conform to universal *ratio*.

⁵⁰ For Walker's discussion of proportionality, see *Intimations*, 167.